

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5, Penal Code (PC) Section 5058, and the rulemaking authority granted by PC Section 5058.3, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3000, 3375, 3376.1, and 3379 of the California Code of Regulations (CCR), Title 15 concerning inmate transfers – California Out of State Facility (COCF).

PUBLIC HEARING:

Date and Time: December 30, 2008 – 9:00 am to 11:00 am
Place: Corrections Standards Authority
Large Conference Room
660 Bercut Drive, West Entrance
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close, December 30, 2008, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Kelly Medina, PAII
Regulation and Policy Management Branch
Telephone (916) 341-7326**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Michele Gonzalez, CCIII
Division of Adult Institutions - COCF
Telephone (916) 464-3808**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT:

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *No fiscal impact in current State Fiscal Year 07/08. Any minor costs associated with these regulations will be able to be absorbed within CDCR's existing budget and resources.*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to

the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

In this regulatory action, the Secretary proposes to amend regulatory provisions pertaining to the inmate transfers, California Out of State Facility which are set forth in CCR, Title 15, Section 3379 as follows:

- This action amends provisions governing inmate transfers. These regulations establish rules governing the transfer of CDCR inmates to California Out of State Facilities (COCF) as well as the basic fundamental rights and due process to be afforded to an inmate while housed in a COCF. New language shall also establish and clarify the ability of staff to comply with the CDCR objective of housing inmates in the least restrictive security level commensurate with an inmate's need for supervision while at the same time address the security needs of those inmates who are transferred to and housed in a COCF. Additionally, language is adopted to establish clearly defined criteria, due process, and a priority transfer order as outlined in Assembly Bill 900 and the Governor's State of Emergency Proclamation for prison overcrowding. A clear, consistent correctional standard is critical to statewide enforcement in order to eliminate the risk of arbitrary or capricious interpretation and promote appropriate placement of inmates.
- These proposed emergency regulations are necessary for the immediate preservation of the peace, health, and safety of the general public. The severe overcrowding continues to pose substantial risk to the safety of the men and women who work inside these institutions and the inmates housed in them. The substantial risk of violence, greater difficulty controlling large inmate populations, possible transmission of infectious illnesses, and the limited space for inmate living conditions which obstructs the view of correctional staff continue to maintain an environment with enormous security risks for CDCR staff, inmates, and the public. Overcrowding leads to inmate unrest and misconduct, causes harm to people and property, reduces and eliminates programs, and frustrates rehabilitation efforts. To alleviate this situation, the CDCR proposes to amend Section 3379, Inmate Transfers, by adding new text that will establish and include California Out of State Facility (COCF) transfers.